

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v

File No. 120460-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 28th day of September 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 6, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on April 13, 2011.

The Petitioner receives health care benefits under a non group individual health plan. The benefit plan is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The terms of coverage are found in BCBSM's *Flexible Blue II Individual Market Certificate* (the certificate).

The Commissioner assigned the case to an independent medical review organization because it involves medical issues. The reviewer's analysis and recommendations were submitted to the Commissioner on April 29, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

The Petitioner went to the emergency room after experiencing a dizzy spell. She later followed up with a visit to a cardiologist. The cardiologist recommended tests, including wearing a mobile cardiovascular telemetry device. The Petitioner used this device for a period of time on or about January 23, 2010, and the charge was \$3,885. BCBSM denied coverage,

concluding that the procedure is investigational and therefore not a covered benefit under the certificate.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on March 7, 2011, and issued a final adverse determination dated March 14, 2011, affirming its position.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's heart monitoring as investigative?

IV. ANALYSIS

Petitioner's Argument

The Petitioner advises that her doctor recommended she wear a heart monitor. She states that she "was told by BCBSM that they had to send the bill to the state where the monitor came from . . . Next thing I heard almost a year maybe longer that they were not pay it."

The Petitioner believes that her heart monitor was a covered benefit under her certificate and BCBSM is required to pay for it.

BCBSM's Argument

BCBSM states that in the certificate under "Section 7: General Conditions of Your Contract," experimental services are excluded from coverage:

Experimental Treatment

Services That Are Not Payable

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment. . . . In addition, we do not pay for administrative costs related to experimental treatment or for research management.

In Section 8, "experimental treatment" is defined as:

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment. Sometimes it is referred to as "investigational" or "experimental services."

In its final adverse determination, BCBSM wrote:

It is our consultants' opinion that real-time outpatient cardiac telemetry is

considered experimental/investigational in patients who experience symptoms suggestive of cardiac arrhythmias. . . . While this service may be safe, its effectiveness in capturing arrhythmias for immediate treatment, as opposed to conventional outpatient cardiac monitoring, has not been scientifically determined.

BCBSM submits that its denial of the Petitioner's heart monitor as experimental was correct and in accordance with the certificate.

Commissioner's Review

The question of whether the Petitioner's heart monitor was experimental for treatment of her condition was presented to an independent medical review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a physician board certified in cardiology who holds an academic appointment and has been in active practice for more than 15 years. The IRO reviewer's report offered the following analysis and conclusion:

[T]he wearable mobile cardiovascular telemetry device that the [Petitioner] received was investigative for diagnosis and treatment of her condition.

* * *

[I]mmediate recognition and reporting of dysrhythmias through a call center provided by a real-time mobile telemetry service has not been shown to improve health outcomes compared to standard monitoring techniques. (citations omitted)

The reviewer recommended that BCBSM's denial of coverage be upheld.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner finds that the mobile cardiac outpatient monitor is investigative for treatment of the Petitioner's condition and is therefore not a covered benefit under the terms of the certificate.

V. ORDER

Respondent Blue Cross Blue Shield of Michigan's March 14, 2011, final adverse

determination is upheld. BCBSM is not required to provide coverage for the Petitioner's heart monitor.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.